STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY LAYNE WATERS,

Defendant-Appellant.

UNPUBLISHED
March 20, 2007

No. 264993
Presque Isle Circuit Court
LC No. 05-092235-FC

Before: Smolenski, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) (victim under the age of 13), and two counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) (victim under the age of 13). Defendant was sentenced to concurrent prison terms of 15 to 30 years for the CSC I conviction, and 10 to 15 years on both counts of CSC II. Defendant appeals as of right and we affirm.

Defendant first argues that the prosecutor committed misconduct by introducing improper character evidence concerning the frequency of his sexual contact with adult women. In *People v Travis*, 246 Mich 514, 515-516; 224 NW2d 329 (1929), the Michigan Supreme Court concluded that it was error for the prosecutor to introduce evidence that the defendant, a married man, had not had sex with his wife for four years, and to argue that the absence of sexual activity for this period of time made defendant more likely to commit a rape than one whose sexual desires had been regularly satisfied. See also *People v Flanagan*, 129 Mich App 786, 794; 342 NW2d 609 (1983 (holding that "the trial court abused its discretion by allowing the prosecutor to use the evidence regarding defendant's access to 'normal;' sexual relations as probative of defendant's propensity to rape").

However, defendant's case was not heard by a jury. This Court has held that "'[a] judge, unlike a juror, possesses an understanding of the law which allows him to ignore such errors and to decide a case based solely on the evidence properly admitted at trial.'" *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001), quoting *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988). Given this presumption, and considering the weight of the evidence adduced below, any error in the introduction of this evidence was harmless.

Defendant next argues that insufficient evidence was adduced to support his convictions. This argument is based primarily on an attack on the credibility of complaint and another minor witness. In evaluating the sufficiency of the evidence, this Court "will not interfere with the [trier of fact's] role of . . . deciding the credibility of the witnesses." *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127, lv den 471 Mich 900 (2004). Thus, defendant's arguments about witness credibility cannot provide a proper basis for finding insufficient evidence to support his convictions.

Defendant also asserts that other adult witness provided hearsay testimony. However, defendant does not specifically cite which portions of their testimony amounts to hearsay. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position . . . . Failure to brief a question on appeal is tantamount to abandoning it." *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001). Defendant's failure to cite the allegedly improper testimony also does not allow for an analysis of whether an exception to the hearsay rule applies, *see, e.g.*, MRE 803(2), (4); MRE 803A, or for an analysis of the harmlessness of any error. In any event, the judge presiding at a bench trial is presumed to be aware of the rules of evidence, including the limits placed on the admissibility of hearsay. *Taylor*, *supra* at 305. Thus, defendant's claim that inadmissible hearsay was admitted cannot provide a proper basis for finding insufficient evidence to support his convictions.

Defendant also argues that the medical evidence presented by the doctor who performed an examination of complainant at the behest of the Family Independence Agency was insufficient to convict defendant because she could not definitively say that complainant had been assaulted, and because he could not be pinpointed as the source of complainant's injury. However, the doctor did testify to complainant's injuries, and opined that they were "suspicious" of sexual abuse, and that her hymenal abnormality was "most likely" the result of abuse rather than genetics. Based on the doctor's qualifications as an expert witness with experience in cases involving sexual abuse of a child, it was not unreasonable for the court to credit her findings in the case. The doctor's testimony, combined with the other evidence offered by the prosecutor, was sufficient to convict defendant.

Defendant next argues that it was the trial court's duty to issue a directed verdict on the charges. Defendant's argument on this issue is predicated on a challenge to the credibility of complainant and the other minor referenced above. As previously noted, this Court "will not interfere with the [trier of fact's] role of . . . deciding the credibility of the witnesses." *Fletcher*, *supra* at 561.

Defendant next argues that reversal is required because of the examining doctor's testimony concerning complainant's statements to her during an oral evaluation. However, the record clearly shows that defendant's objection to this testimony was sustained and the challenged evidence was never admitted.

Finally, defendant argues that the cumulative effect of the cited errors denied him a fair trial. Here, because the prosecutor's question about the frequency of defendant's sexual contact with adult woman was at best harmless error, there was no cumulative error sufficient to deny defendant a fair trial. See *People v Bahoda*, 448 Mich 261, 292 n 64; 531 NW2d 659 (1995).

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kurtis T. Wilder